

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

MITCHELL KLEIN,

Plaintiff,

Case No. 23-cv-1231-bhl

v.

DENIS MCDONOUGH,

Defendant.

ORDER GRANTING MOTION

On September 18, 2023, Plaintiff Mitchell Klein, proceeding *pro se*, filed a complaint alleging employment discrimination against Denis McDonough. (ECF No. 1.) On November 27, 2023, Klein filed a motion to amend his complaint, asking that his “Complaint be amended to add those claims from Appeal #2022001862 dated 9/25/23 (Attachment A) ... and not those claims which the Commission remanded for continued administrative processing.” (ECF No. 4 at 1.)

Under Federal Rule of Civil Procedure 15, “[a] party may amend its pleading once as a matter of course within...21 days after service of a responsive pleading or 21 days after service of a motion under” Rule 12 “if the pleading is one to which a responsive pleading is required.” Fed. R. Civ. P. 15(a)(1)(B). A complaint is a pleading that requires a response from the defendant. *See* Fed. R. Civ. P. 12(a). In this case, the defendant has not yet appeared, and so no responsive pleading has been filed just yet. Therefore, Klein need not have asked the Court’s permission to file an amended complaint; he may do so as a matter of course under Rule 15(a)(1)(B). The Court will nevertheless grant his motion and affirmatively allow him to file an amended complaint.

That said, the Court will require Klein to file a revised amended complaint that includes all of his allegations in a single document. An amended complaint supersedes the prior complaint and must be complete in itself without reference to the original complaint. *See Duda v. Bd. of Educ. of Franklin Park Pub. Sch. Dist. No. 84*, 133 F.3d 1054, 1056–57 (7th Cir. 1998). Klein’s motion asks that specific amendments be made to the original complaint but does not file a proposed document adding those changes to his existing pleading. Klein must therefore file

another document, labeled “Amended Complaint,” that is complete without reference to his original complaint, within fourteen days of the date of this Order.

Finally, Klein is reminded that under Rule 4(m), he has ninety days from filing his complaint to serve the defendant, and filing an amended complaint does not restart this clock. *See* Fed. R. Civ. P. 4(m); *UWM Student Ass’n v. Lovell*, 888 F.3d 854, 859 (7th Cir. 2018). Thus he must serve the defendant, if he has not already done so, by December 18, 2023. Because Klein is suing the Secretary of Veterans Affairs, he is also reminded he must serve the United States in addition to serving Defendant McDonough. *See* Fed. R. Civ. P. 4(i). If Klein needs additional time to complete service, he should file a motion requesting additional time *before* his current deadline expires on December 18, 2023.

Accordingly,

IT IS HEREBY ORDERED that Klein’s motion to amend his complaint, ECF No. 4, is **GRANTED**.

IT IS FURTHER ORDERED that if Klein still wishes to amend his complaint, he must file a new document titled Amended Complaint that is complete by itself without reference to the original complaint within fourteen days of the date of this Order, or on or before **December 13, 2023**.

Dated at Milwaukee, Wisconsin on November 29, 2023.

s/ Brett H. Ludwig
BRETT H. LUDWIG
United States District Judge